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No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

WILLIAM A. KING

Petitioner

V

THE STATE OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES STATE OF CALIFORNIA

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Petitioner, Pro Se

QUESTION PRESENTED FOR REVIEW

1. Whether the petitioner, a Los Angeles businessman, was deprived of the equal treatment of the law by the arbitrary, discriminatory and capricious acts of those charged with the administration of the law, such conduct being aimed at preventing the petitioner equal protection of the laws?

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No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1964

WILLIAM A. KING

Petitioner

V

THE STATE OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Petitioner, William A. King respectfully prays that a writ of certiorari issue to review the majority opinion of the Appellate Department of the Superior Court, County of Los Angeles, State of California which affirmed the Municipal

Court's holding that Petitioner was not denied his Constitutional rights under the Fourteenth Amend. of the U.S. Const. --equal protection of the laws, that the prosecuting officials did not prosecute petitioner with invidious discrimination under color of law and the lower Courts have not treated the violation of which the Petitioner was convicted with ex post facto effect in violation of Art. 1, Sec 9 of the U.S. Constitution and Art. 1, Sec 16 of the State of California Constitution.

OPINIONS BELOW

The Appellate Depart. of the Superior Court, Los Angeles County, State of Calif. entered its order rejecting Petitioner's Fourteenth Amendment of the U.S. Const. claim and Art. 1, Sec 9 of the U.S. Const. claim on July 3, 1984 and denied Petition-

er's request for a rehearing on Aug. 1, 1984. People of the State of California v William A. King, Superior Court No. CR A21364.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 USC Section 1257(3) on the grounds that his rights under the 14th Amendment and Art 1, Sec 9 of the U.S. Constitution were violated.

The decision of the Appellate Depart. of the Superior Court of the Los Angeles County became a "final judgment" rendered by the highest Court of the State in which a decision could be had on an appeal from a Municipal Court. The instant petition for Writ of Certiorari is filed within sixty days of that order.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Criminal law

No constitutional provision prevents the full prosecution of all criminal law violaters, so long as such prosecution is not tainted with invidious discrimination. West's Ann. Const. Art 1, sec 7(a), U.S.C.A. Const. Amend. 14

2. Constitutional law, Criminal law

Equal protection clauses of Federal and State Constitutions safequard individuals from intentional and purposeful invidious discrimination in enforcement of all laws, including penal statues, and a defendant may raise such a claim of discrimination as a ground for dismissal of a criminal prosecution. West's Ann. Const. Art 1, Sec 7(a); U.S.C.A. Const. Amend. 14

3. Constitutional law

An equal protection violation does not arise whenever officials prosecute one and not another for the same act; instead the equal protection guarantee simply prohibits prosecuting officials from purposefully and intentionally singling out individuals for disparate treatment on an invidious discriminatory basis. West's Ann. Const. Art. 1, sec 7(a); U.S.C.A. Amend. 14

4. Criminal law

In order to establish a claim of discriminatory law enforcement a defendant must demonstrate that he has been deliberately singled out for prosecution on the basis of some invidious criterion. West's Ann. Const. Art 1, sec 7(a); U.S.C.A. Amend. 14.

5. Criminal law

A criminal defendant may object in the course of a criminal proceeding to the maintance of the prosecution on ground of deliberate invidious discrimination in the enforcement of the law, and is not limited to a civil suit for damages of injunctive relief. West's Ann. Const. Art 1, sec 7(a), U.S.C.A. Amend. 14

6. Constitutional law

enforcement of statues is to safeguard individuals from administrative officials who utilize their discretionary powers of selective enforcement as a vehicle for intentional invidious discrimination; and such discriminatory law enforcemont conduct poses as significant a denial of equal protection if officials misuse a variety of statutory enactments

as if officials abuse only a single provision. West's Ann. Const. Art 1, U.S.C.A. Amend. 14

STATEMENT OF THE CASE

Petitioner, in this instant case, was charged with a misdemeanor violation of a Municipal Code, obstructing a thoroughfare. At the time the original complaint by the Los Angeles, Calif. Street Use Department was brought to the Petitioner's attention, there existed at least six other like blocked easement/ thoroughfares in the vicinity of Petitioner's business. These other violations were brought to the attention of the inspectors, at the time of the original complaint was made by the inspectors to the petitioner, and a complaint by the Petitioner was filed with these inspectors about these like violations. The Petitioner pointed out to the inspectors of the Los Angeles Street Use Department for that Department to fail to act upon his complaints would be a violation of

his Fourteenth Amendment rights guaranteed under the U.S. Constitution--equal protection of the laws and if no action was taken on his complaints, the Petitioner was willing to go to Court to see that these rights were enforced, even if it meant goint to the U.S. Supreme Court.

After the verbal complaint was given to the Petitioner, the prosecuting officials gave to him a Notice with ten days to comply; the Petitioner did comply with that Notice but the prosecuting officials gave him a citation for the offence seven days later and then charged Petitioner with the violation plus an additional separate and distinct violation included and backdated into the first violation and ordered him to trial.

Prior to trial, Petitioner filed a Motion seeking dismissal of the charges on the grounds that these prosecutions

violated his constitutional right to the equal protection and treatment of the laws, a Federal question to be settled and giving Judicial Notice of such. Petitioner alleges that the charges against him were instituted as part of an invidious pattern of singling him out for discriminatory enforcement of the City's Municipal laws. This Motion was denied.

At the time of trial, the Petitioner explained to the Court, prior to jury instructions and giving Mandatory Judicial Notice, that he felt that the primary issue to be tried was of a Constitutional nature and that it should have been heard in a Federal or U.S. Court. (Appendix 3, trial material page 2, May 9, 1983 session)

"THE COURT: You do know what the charge is, is that

correct?

THE DEFENDANT: One thing, your Honor. I think this is something dealing with constitutional rights, and I just wonder if this Court is the one to try it. I know that violations of Constitutional rights are tried in the U.S. Courts.

MS. Mayo (deputy City Attorney) Your Honor, the section that the defendant is charged with is a Los Angeles...."

After raising this issue of a Federal matter, Petitioner was never answered in regards to this issue. Petitioner, who felt the Court lacked the jurisdiction to hear the matter was then forced to accept a trial in that Court and denied

his original defense based on the Yick Wo v Hopkins decision of the Supreme Court of the U.S., a direct parallism to his case.

The point in controversy in the instant case is that Petitioner feels that his is the subject of being singled out for invidious discriminatory enforcement of the laws by the prosecuting officials and has received unequal treatment at the hands of these officials. Being denied this as a defense in trial, the Petitioner is unable to show proof of this invidious discrimination by the prosecuting officials when those officials have tried and convicted the Petitioner for an offence that was being committed by neighboring businesses and nothing has ever been done in regards to Petitioner's complaints.

The equal protection clauses of the Federal and State Constitutions safeguard

individuals from "intentional and purposeful" invidious discrimination in the enforcement of all laws, including penal statues and a defendant may raise a claim of discrimination as a grounds for dismissal of a criminal prosecution. Petitioner contends that the equal protection clauses of our Federal and State Constitution compel the recognition of such a defense. The Fourteenth Amend. of the Federal Constitution and Article 1, sec 7(a) of the California State Constit. prohibit all state action which denies to any person the "equal protection of the laws."

As the United States Supreme Court declared in Ex Parte Virginia (1880) U.S. 339, 347, 25 L. Ed 667,

> " A state acts by its legislature, executive, or its Judicial authority. It can act in no other way. The const-

> itutional provisions therefore must mean that no agency or the State, or of the officers or agents by whom its power are exerted, shall deny to any person within its jurisdiction the equal protection of the laws."

The Petitioner filed an Appeal in the Appellate Department of the Superior Court, County of Los Angeles, State of California and in their decision filed on July 3, 1984, they upheld the lower Court's decision to refuse to allow Petitioner the right to raise his claim that he was denied the equal protection of the laws as a defense at trial. The Petitioner filed for rehearing and was denied on August 1, 1984. These decisions are attached as Appendix 1 and 11.

Petitioner alleges, that in this instant case, that he had given Mandatory Judicial Notice of a Constitutional violation of discriminatory enforcement of the law and also a violation of the Const. issue of the Fourteenth Amendment--equal protection of the laws in his Motion to Dismiss prior to trial and the Motion was denied and Mandatory Judicial Notice ignored. Petitioner, also, before jury instructions, raised the Constitutional issue and a Federal question again and again the trial Court failed to take Mandatory Judicial Notice. The Evidence Code of the State of California, Sec 451 states that

> "Judicial Notice of the matters specified in Sec. 451 is Mandatory whether or not the Court is requested to notice them."

These matters under Mandatory Judicial Notice include Constitutional questions under Evidence Code of Calif. Sec 451(a).

In Evidence Code of Calif. Sec 455

(comment Law Review Comm.) it states:

> "if the Judge does not discover that a matter should be judicially noticed until after the cause is submitted for decision, he may, of course, order the cause to be reopened for the purpose of permitting the parties to provide him with information concerning the matter."

As the Trial Judge, in two instances, was given Mandatory Judicial Notice and having chose to ignore it both times, the Petitioner asked the Appellate Department in a rehearing petition, under Evidence Code of Calif. Sec 459(a)2 that the reviewing Court take Judicial Notice of this violation of Petitioner's Constitutional rights under the Fourteenth Amendment of the U.S. Constitution, equal protection of the laws and for that Court to either reverse the decision of the lower Court or to transfer the matter to the proper Court, where the Petitioner would be afforded an opportunity to show, as Yick

Wo had shown in 1886, that he is the victim of invidious discrimination by prosecuting officials.

Furthermore, the Petitioner brought to the Court's attention that the

> "doctrine of equal protection of law does not mean that everyone must be treated in exact same way. It means that there must be equal treatment unless State can show a compelling justification to the contrary."

In Re Werden, 142 Cal Rptr 622, 76 C.A. Ed 79 Cal App 1977. Petitioner feels that it would be impossible for the City officials who prosecuted him to show that there is any compelling justification to have singled him out for a violation of the law (when he did comply within the prescribed time) and to allow these other like easement/thoroughfares to remain blocked, now and then, unless for invidious discrimination so unjustifiable as to be violative of due process of the law. Bolling v Sharpe

347 U.S. 497, 74 S. Ct. 693, 98 L. Ed 884.

And furthermore, the lower Court has refused to allow the Petitioner to defend his case on a Constitutional ground of invidious discrimination which is in direct conflict to the Court's findings of Murgia v Municipal Court for Bakersfield JD, 540 P 2d 44, 15 Cal 3d 286, which states that

> "the decisions of the U.S. Supreme Court explicity recognizes that a criminal defendant may defend a criminal prosecution on the ground that he has been the subject of such 'intentional and purposeful' invidious discrimination."

At the time of trial, Petitioner further raised an issue of ex post facto treatment of the violation of which he was being tried. In the final arguement, in the Municipal Court trial, the prosecuting official stated (Appendix 4, trial material page 15, 16, May 10, 1983 session)

> "Just very briefly, Ladies and Gentlemen, whether or not there was compliance

> is not an issue as to whether or not the defendant is quilty of this offence."

thus giving an ex post facto effect to two separate and distinct violations.

The Appellate Dept., in its decision, held that ex post facto did not apply to Petitioner's assertion that permitting prosecution of "two separate and distinct violations for which a separate citation for each offence would be required" violates his protection against ex post facto application of the law. Petitioner feels that the Court may have improperly interpreted ex post facto effect when two separate and distinct violations (one of which was complied with within the prescribed time allowed by law) have been backdated and combined into one violation to get a stronger conviction

and then not call it having ex post facto effect in violation of Art 1, Sec 9 of the U.S. Constitution and Art 1, Sec 16 of the Constitution of the State of California.

The Appellate Dept of the Superior Court, Los Angeles County states that

> "the ex post facto protection, however, exists to prohibit making criminal that which is innocent when undertaken, to make more onerous the punishment for an act already criminal when done, to inflict a greater punishment than that prescribed for the doing of the act at the time it was committed, or to permit a person to be convicted upon less evidence than that required when the act was committed." In Re Bray (1979) 97 Cal. App. 3d 506, 510.

and this is exactly the point that the petitioner has been stressing and has been argueing in his allegation of ex post facto effect when the prosecuting officials have taken a violation of a truck parked in an alley (a mere infraction requiring a parking ticket) and another violation of a fence

across an alley (known as a public nuisance but only when it harms the public at large--a fence across an unused, unmaintained easement/thoroughfare in a rundown industrial area could hardly harm the public at large) and have combined these two separate and distinct violations into one violation, making it a $400 fine with two year summary probation. In Ex Parte Flora, Ohio App. 31 N. E. 2d 482, 485, the Court found

> "an increase in possible penalty is ex post facto regardless of length of sentence actually imposed.."

Petitioner feels the main issue at stake is a jurisdictional question. The Petitioner, who does not feel that it is proper to break the law for his own benifit, does feel that the prosecuting officials have treated him unequally in regards to other citizens in like circumstances and Petitioner feels he has been denied a trial in the proper court due to the lower Court's

failure to recognize this issue as a Federal question.

CONCLUSION--REASON FOR GRANTING WRIT

Petitioner prays that this Court grant his writ of certiorari, not so much as a vindication for the injustice that he has received, but for the protection of the U.S. Constitution itself and a nation that has produced a living standard for all its citizens that is the highest in the world through its fair treatment of all individuals with its just laws and Courts.

The Petitioner, who is one single person in a nation of many other single individuals that are combined together to make a nation at large, are all protected by rights guaranteed by the U.S. Const. and upheld by the Supreme Court of the United

States. When those rights, no matter how small, of that one single anonymous litigant, petitioner, defendant or individual are allowed to be chipped away in whatever minute manner through the power of a stronger or more learned group, using a misinterpretation of a law for the benifit of one group over another, or through a missapplication of a statue to benifit one individual or group over another or through a distortion of semantics, twisting of ideals or intent or use of legalese so as to benifit one group or individuals or worse yet, to allow the Courts to become simply a revenue producer for a Municipality or State through legal manipulation of laws by the prosecuting officials, this chipping away, if allowed, will erode the whole foundation of a nation built on laws to

protect individual rights. When that is allowed to happen, then that single anonymous Petitioner then becomes the victim of a totalitarian State with no longer any rights guaranteed except in principle and not in fact and soon that Nation and Freedom dies.

Respectfully Submitted

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APPENDIX

Appendix 1

OPINION AND JUDGMENT

Appeal by defendant from judgment of the Municipal Court, Micheal J. Yelovich, Judge.

JUDGMENT AFFIRMED.

For Appellant - In Propria Persona

For Respondent - Ira Reiner, City Attorney

Jack L. Brown, Dep. City Attorney

William N. Sterling, Dep. City Attorney

oOo

Defendant appeals from an order granting probation following the jury trial in which he was found quilty of violating Los Angeles Municipal Code section 56.08(e) (maintaining an obstacle as a street obstruction.) At his trial appellant represented himself.[1]

1. The docket reveals that the court appropriately warned appellant of the dangers

and disadvantages of representing himself and, prior to trial, that appellant knowingly and intelligently waived his right to be represented by counsel.

Appellant contends on his appeal, in which he represents himself and has written a most confusing brief, that the trial court improperly denied him the right to present evidence at his trial concerning discriminatory enforcement of the law and that the court permitted the introduction of photographic evidence thereby resulting in a miscarriage of justice. Finally appellant contends that the trial court violated his civil rights by permitting the prosecution of "two violations together making them in effect "ex post facto."[2]

2. Appellant asserts numerous "facts" in his brief; however these are not part of the record on appeal and will not be consid-

ered by this court. (People v Merriam (1967) 66 Cal. 2d 390, 396-397)

At his pretrial motion to dismiss appellant urged that he was the victim of discriminatory enforcement of the law. Although he made certain factual statements in his Memorandum of Points and Authorities submitted in support of his motion, he presented no declaration or evidence in support of the motion. The law is well settled that the burden of proof in establishing a claim of discriminatory enforcement is upon the defendant. (People V. Superior Court (hartway) (1977) 19 Cal. 3d 338, 348; see also Murgia v Municipal Court, (1975) 15 Cal. 3d 286, 305.) Appellant failed to submit evidence in support of his contention; the trial court properly denied appellant's motion to dismiss.

We also reject appellant's contention that the trial court improperly precluded him from presenting evidence before the trier of fact in support of his defense of discriminatory enforcement. Such a defense is not properly one to be tried by the jury; rather the claim should be treated as an application to the court for dismissal upon constitutional grounds. (murgia v Municipal Court, supra, 15 Cal. 3d, 286, 293-294)[3]

3. Appellant's contention concerning "ex post facto" application of the law by the prosecution's joinder in one count of what the appellant contends were two separate violations is without merit.

Appellant seems to assert that by permitting prosecution of "two separate and distinct violations for which a separate citation for each offense would be required" somehow violates his protection against ex

post facto application of the law. The ex post facto protection, however, exists to prohibit making criminal that which is innocent when undertaken, to make more onerous the punishment for an act already criminal when done, to inflict a greater punishment than that prescribed for the doing of the act at the time it was committed, or to permit a person to be convicted upon less evidence than that required when the act was committed. We fail to perceive how the ex post facto prohibition applies to appellant's case.

Appellant appears to argue that the introduction of photographs establishing violations of section 56.08 on dates other than on the date of the offense charged constitute such an ex post facto application. We disagree. (In re Bray (1979) 97 Cal. App

3 506, 510.)

Appellant's real complaint appears to be that the trial court permitted introduction of certain photographs. In the first place appellant failed to object to the photographs when they were offered at trial. Such failure to object constitutes a waiver of the issue at appeal. (Evid. Code sec 353) These photographs, moreover, served to illustrate and corroborate the testimony of the prosecution witnesses. Under these circumstances they were properly admitted.[4]

4. Appellant stated as a ground for appeal that the Municipal Court lacked jurisdiction to try him. He has not raised this issue in his opening brief and we deem it therefore to have been abandoned.

The judgment (order granting probation) is affirmed.

We Concur. Judges Shabo, Reese, and Cooperman.

APPENDIX 11

ORDER DENYING REHEARING AND DENYING CERTIFICATION.

THE COURT*

The petition of defendant for a rehearing after judgment of this court on appeal or, in the alternative, certification of cause to the Court of Appeal in the above-entitled case, having been filed and having been duly considered,

Said petition is hereby denied.

*Before Cooperman, Acting P.J. and Shabo, J.

APPENDIX 3

SAN PEDRO, CALIFORNIA: MONDAY, MAY 9, 1983, A.M. SESSION

THE COURT: Are you still willing to give up your right to have an attorney and represent yourself?

THE DEFENDANT: That's right.

THE COURT: You realize, do you not, that you will be subject to all of the rules and regulations exactly as an attorney would be if he were defending you?

THE DEFENDANT: Yes, your Honor.

THE COURT: You do know what the charge is, is that correct?

THE DEFENDANT: One thing, your Honor. I think this is something dealing with constitutional rights, and I just wonder if this court is the one to try it. I know that violations of constitutional rights are tried in the U.S. courts.

MS. MAYO: Your Honor, the section that

the defendant is charges with is a Los Angeles Municipal Code section; obstructing a street or sidewalk. The defendant has raised certain constitutional issues in his Motion to Dismiss, which I believe has previously been denied.

Also, your Honor, before we proceed to trial, the People will be asking the Court for a rule that the defendant not be allowed to bring up certain matters that the People feel are irrelevant to the issues in this case, including the matters mentioned in the defendant's Motion to Dismiss.

Appendix 4

SAN PEDRO, CALIF. TUESDAY, MAY 10, 1983;

P.M. SESSION.

THE DEFENDANT: Well, my contention is that if the law is administered with an evil and unjust hand that it prosecuted my civil rights by being taken from me. In this case, this city official, Ms. Aluag, by her testimony, substantially---

You have all heard this. Or, would you like to call her back? She stated the dates on this. We had complied. She, actually, in essence, as to the last had gone out and made a seperate complaint. And, we put in complaints of our own, which were ignored. In fact, any relation between this fence-- When I had the stuff stolen off my truck, to have it open, I think it falls under liberty. I'm allowed to do certain acts for my own protection, and I had done this. This alley had never

been used by any cars. People had run up and down this alley. I'm sure, maybe, wineos sleeping in the alley. Drinking, crime problems. Thusly, I put this fence across there at a later date after having complied with this, which is a seperate thing. And, the reason I had done this is that my competitors up and down the street had fences across their alleys. All of these alleys---

MS. MAYO: Your Honor, I object.

THE COURT: The objection will have to be sustained. That is not part of the evidence. Just argue what has been produced as evidence.

THE DEFENDANT: My evidence is that we complied with the first complaint, and that this complaint was back dated to the 8th. The formal complaint given by the City, March 8 is when it was issued and back dated to Dec 8, 1982. So, therefore, I say this falls under the ex post facto which, again, to retrench the rules of law so as to make a

conviction more easy. I rest my case on this fact.

THE COURT: Ms. Mayo, you may conclude.

MS. MAYO: Thank you, your honor. Just very briefly, ladies and gentlemen, whether or not there was compliance is not an issue as to whether or not the defendant is quilty of this offense.